

David Stebbins (pro se Plaintiff)
(870) 212-4947

123 W. Ridge Ave., APT D, Harrison, AR 72601
acerthorn@yahoo.com

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

DAVID STEBBINS,

PLAINTIFF

VS.

Case 3:24-cv-03727-LB

JOHN DOE, d.b.a. CREETOSIS
YOUTUBE LLC

DEFENDANTS

**SUPPLEMENTAL ARGUMENT IN SUPPORT OF WHY THE CLAIMS SHOULD BE
ALLOWED TO PROCEED**

Comes now, pro se Plaintiff David Stebbins, who hereby submits the following Supplemental Argument in support of why the copyright infringement claims in this action should be allowed to proceed.

1. At this time, the Court is doubtlessly reviewing the Complaint to ensure it states a claim upon which relief can be granted, pursuant to 28 USC § 1915(e).
2. All throughout the complaint, I made clear that the primary reason why Creetosis's videos are not fair use is because he plays 100% of my original videos while providing minimal commentary. Today, I would like to offer an additional argument to demonstrate to the Court just how minimal that commentary truly is.
3. I have no intention of doing this for the entirety of every reaction stream I am suing over in this case. These streams are all several hours long. Like I said in Dkt. 1, ¶ 31 and Footnote #3, it is the Defendant's burden to prove fair use, and if he intends to do that, it is he, not I, who "will have to meticulously and painstakingly go through each sentence of his multihour-long streams, one sentence at a time (like picking individual grains of rice out of a swimming pool) and justify each individual sentence as being" transformative. What I am about to show you is only a small sample of what the Court is likely to find if it endeavors to review these streams for fair use on its own.
4. That said, I took it upon myself to review the first 30 minutes of Creetosis's "STAG #6"

stream. This is the stream I am suing over in ¶¶ 33-37 of the Complaint. The entire stream was eight hours in total, but I took the first 30 minutes as a sample size.

5. I uploaded this 30-minute clip as unlisted to my YouTube channel under the title “First 30 Mins of STAG #6 - Grade 1 (Nothing Removed).” You can see this unlisted video here:

<https://www.youtube.com/watch?v=TrCEBmeLaxE>.

6. As I point out in the complaint, not all original content Creetosis provides fits the legal definition of transformative. As I explain in ¶¶ 29-30, commentary that has nothing at all to do with the video they're reacting to does not qualify as transformative.

7. This actually constitutes a majority of the content Creetosis provides. To prove this, I created the video “First 30 Mins of STAG #6 - Grade 2 (Only Criticism of My Video),” which the Court can view at the following URL: <https://www.youtube.com/watch?v=X-H1emItRNc>. This video removes all the irrelevant discussions from the clip and, as you can see, this has the effect of reducing the clip to less than 12 minutes in length, less than half the original runtime.

8. But it doesn't end there. Although the remaining content technically qualifies as criticism and/or commentary, a lot of it is incredibly redundant. For example, at timestamp 0:21 – 1:48 of Grade 2, and again at 1:59 – 3:03 of same, Creetosis provides what appears to be approximately 2½ minutes of criticism, but if you actually think about it, all he's really doing is saying the same thing over and over again: That my opening to the video is poisoning the well and starts my audience off on the wrong foot. He never bothers to explain exactly *why* this is such a bad way to start the video, nor does he claim that his opinion is based on any sort of expertise. He just keeps saying “it's the wrong way to start” over and over again. There are slight variations in the way he says it, but none of these variations add anything of value that isn't redundant of him saying it once and moving on.

9. This is an important distinction to make because, once he's made his point, if he fails to make any *more* points, then his repetition fails to add any additional transformative value. If the repeating of the exact same opinions, over and over again, with no new substance or nuance, still counted as adding transformative value, it would be far too easy to get fair use. All you have to do is just say “This is a really great/bad video” over and over again 5,000 times, and *poof*, you've

got instant fair use. Bear in mind that the Supreme Court has cautioned against interpretations of fair use that would have the effect of rendering “the promise of copyright ... an empty one.” See Harper & Row, Publishers, Inc. v. Nation Enterprises, 471 US 539, 557 (1985).

10. So if we take out all the completely redundant criticism, what are we left with? Honestly, not much. In fact, once we remove all the redundant parts of Creetosis's commentary, only a couple of minutes remain! That is not an exaggeration!

11. To prove this, I created “First 30 Mins of STAG #6 - Grade 3 (No Repeated Criticism),” which you can see at the following URL: <https://www.youtube.com/watch?v=s2HO3eQeTOc>. In this version of the excerpt, I kept one instance each for every piece of non-redundant criticism that he provides (aka each “point” he makes, but I only provide each point once). I did my level best to include the version of each point that I felt was the most profound and told the most complete thought, although I admit that reasonable minds may differ in that regard. I also did my level best to only remove comments that were redundant of the portions I kept while keeping anything that made a non-redundant point, but again, reasonable minds may differ.

12. As you can see from Grade 3, the excerpt went from 11½ minutes down to only 5½ minutes, less than half the total runtime of Grade 2, which was itself less than half the total runtime of Grade 1.

13. But even then, we must still remember that a good chunk of this 5½ minute clip was itself taken up by him playing my original video. Unlike the irrelevant commentary, and unlike the relevant-but-redundant commentary, the segments where he actually copies my video *actively weigh against* fair use, rather than simply needing to be tossed out completely.

14. In this 5½ minute clip (which, again, is representative of the first thirty minutes of his stream), Creetosis spends approximately 3 minutes 38 seconds copying my video¹, and *literally less than two minutes* providing transformative, non-redundant criticism of that video²! He literally spends more time copying my video than he spends providing transformative, non-redundant critique of it!

15. On top of that, his criticism (which is already minimal as it is) is the very definition of

1 See https://www.youtube.com/watch?v=L67MLhjv_Ns

2 See <https://www.youtube.com/watch?v=tw7jDCidQV8>

“threadbare.” He provides little more than lay person opinions, with no substance or nuance. As I alluded to earlier, he doesn't purport to base his opinions any sort of expertise.

16. Contrast that with the following example: <https://youtu.be/7Fi5BYzuvZw>. That video is also almost exactly 30 minutes long. However, this man claims to be a doctor (whether he is telling the truth or not is a different story), and the analysis and opinions he gives directly correspond to his purported area of expertise. Because of this, one minute of criticism and commentary from this doctor has exponentially more transformative value than one minute of Creetosis and his friends giving their purely layperson opinions, all else being equal.

17. Of course, it also doesn't hurt that he doesn't show literally every single second of the wrestling matches, but only the specific moves that resulted in the injuries he sought to analyze.

18. That's not to say that layperson opinions can never be “highly transformative,” or that an expert's analysis is always more transformative than a layperson's analysis, full stop. But it does mean that, what you lack in expertise, you must make up for in highly detailed and well thought out criticism, not simply saying “this is a bad/childish take” while providing nothing more substantial than that.

19. In my Complaint, I alluded to the possibility that the egregious shortcomings in the other three factors could theoretically be made up for if “the criticism he provides is absolute gold – not just giving dissenting opinions or calling me an idiot, but extremely profound, downright philosophical commentary, the kind that Confucius himself would tip his hat to.” See Dkt. 1, ¶ 110. In my humble and personal opinion, one series on YouTube that comes remarkably close to making a strong case for fair use just on layperson transformative value alone is the series “Dragon Ball Dissection” from the YouTuber “MistareFusion.” You can see that series at the following URL: www.youtube.com/playlist?list=PLpUvCDCHJKPNvBJsIP0PX79UTNx0z1VQJ

20. One segment that the Court can instantly see for itself as being “extremely profound, downright philosophical” without even needing to be a fan of the series he is critiquing can be found at 5:37 – 9:52 of the following video within that series: https://youtu.be/oFWvmE_rHX8?t=337. Even if the Court is not a fan of that series (which it most likely isn't), that segment still covers a social justice issue the Court has no doubt heard countless times in the court of public

opinion, so the Court is still likely to know what he's talking about and can develop its own opinion regarding just how "profound" and "philosophical" his opinions are.

21. As the Court can see, that excerpt is 4 minutes and 15 seconds long, already more than twice as long as the totality of Creetosis's non-redundant criticism of my video in the first 30 minutes of his stream. However, MistareFusion doesn't simply say "M. Popo isn't racist; get over yourselves, you snowflakes" over and over again in about 100 slightly different ways. He actually goes into great detail to support his opinion.

22. Furthermore, nearly every sentence in this 4½ minute excerpt has a good reason for being there; I can't really make a "Grade 3" version of this excerpt because there is very little redundancy in it. The closest I can find to a redundant statement is at 9:22 – 9:25, where the sentence "They don't immediately think 'that's supposed to be me'" could arguably be seen as redundant of the sentence that comes immediately before it: "[T]heir descendants can look at something like Mr. Popo and make absolutely no connection to themselves" (found at timestamp 9:15 – 9:22). However, that is peanuts compared to all the redundancy I had to lop off of Creetosis's stream above. Creetosis's criticism of my video was *majority* redundant point, as evidenced by the fact that the Grade 3 video above was less than half the length of the Grade 2 video.

23. Of course, just like with the doctor example earlier, it doesn't hurt that MistareFusion does not show literally every single panel of literally every single chapter in the entire "Dragon Ball" series, like Creetosis does with his reaction streams.

24. And just to remind the Court: Redundancy in criticism *does not actively weigh against fair use!* Even for Creetosis, I am not arguing that the redundancy in his criticism in any way, shape, or form hurts his case for fair use. I'm simply saying that it doesn't *help* him either because he's already gotten all the transformative mileage he can get out of these points the first time he made them. Once all the redundancy is removed, Creetosis only provides 1 minute 56 seconds of actual transformative value in the first 30 minutes of his stream, despite copying 3 minutes 38 seconds of my video in that same time frame (which *does* weigh against fair use, rather than simply not counting). It is that, not the redundancy itself, that makes Creetosis's case for fair use so weak.

25. Bear in mind that this was just the first thirty minutes of an eight-hour-long stream. Of that thirty minutes, 26 minutes and 22 seconds (aka 1,582 seconds) were original content (with 218 seconds being copying of my video). But of those 1,582 seconds, 1,466 seconds (aka 24 minutes 26 seconds) had to be removed for lack of genuine, non-redundant transformative value. That means that **NINETY-THREE PERCENT** of Creetosis's original content within the first thirty minutes of his stream must be discarded! So imagine how the rest of this stream (as well as his other four streams that I'm suing over today) are likely to hold up when they are subject to similar examination.

26. That is why this Court should approve this Complaint after a § 1915(e) review and allow the copyright infringement claims to proceed.

27. I hope this supplemental argument was informative for the Court, and I hope it assists the Court in resolving the § 1915(e) review in my favor.

So submitted on this, the 26th day of June, 2024.

/s/ David Stebbins
David Stebbins